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OFFICE OF PETITIONS

In re Application of :
Yuzo Kakiya et al. : LETTER REGARDING
Application No. 10/565,105 : PATENT TERM ADJUSTMENT
Filed: January 19, 2006 :
Attorney Docket No. 0020-5462PUS 1

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT", filed April 2, 2009. Pursuant to their duty of good faith and candor to the Office, applicants note that the 317 days of patent term adjustment as indicated on the Notice of Allowance mailed on February 2, 2009 for the above-identified application disagrees with Applicant's own calculation of patent term adjustment.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is three hundred seven (307) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On August 11, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 317 days. Applicants do not state a basis for their disclosure that the Patent Term Adjustment on the Notice of Allowance disagrees with their calculation.

Nonetheless, a review of the record reveals that the initial determination of patent term adjustment of 317 days is incorrect.

Entry of a period of reduction pursuant to 37 CFR 1.704(c)(10) is warranted. As stated in MPEP 2732, papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations. 37 CFR 1.704(c)(10) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the lesser of: (1) the number of days, if any, beginning on the date the amendment under 37 CFR 1.312 was filed and ending on the mailing date of the Office action or notice in response to the amendment under 37 CFR 1.312 or such other paper; or (2) four months. The phrase "lesser of ... or [f]our months" is to provide a four-month cap for a reduction under 37 CFR 1.704(c)(10) if the Office takes longer than four months to issue an Office action or notice in response to the amendment under 37 CFR 1.312 or other paper. See also, *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001).

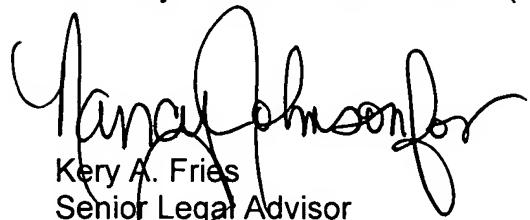
In this instance, after the mailing of the Notice of Allowance on August 11, 2008, on January 7, 2009, applicants filed a Request for Refund filed January 7, 2009. The period of reduction is 10 days, counting the number of days in the period beginning on January 6, 2009 and ending on January 16, 2009.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance should have been 307 days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Examination Policy

Enclosure: Copy of Revised PALM Screen

PALM INTRANET

PTA Calculations for Application: 10/565105					
Application Filing Date:		01/19/2006	PTO Delay (PTO):		317
Issue Date of Patent:			Three Years:		0
Pre-Issue Petitions:		0	Applicant Delay (APPL):		0
Post-Issue Petitions:		0	Total PTA (days):		307
PTO Delay Adjustment:		-10			
File Contents History					
Number	Date	Contents Description		PTO	APPL
77	09/15/2009	ADJUSTMENT OF PTA CALCULATION BY PTO			10
69	02/02/2009	MAIL NOTICE OF ALLOWANCE			
68	01/22/2009	ISSUE REVISION COMPLETED			
67	01/22/2009	DOCUMENT VERIFICATION			
66	01/22/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
65	01/21/2009	NOTICE OF ALLOWABILITY			
64	11/05/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
61	01/16/2009	EMAIL NOTIFICATION			
60	01/16/2009	MAIL REFUND DENIED			
59	01/13/2009	REFUND DENIED			
58	11/05/2008	MISCELLANEOUS INCOMING LETTER			
57	11/05/2008	REFERENCE CAPTURE ON IDS			
56	11/05/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
55	11/13/2008	DATE FORWARDED TO EXAMINER			
54	11/05/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
53	11/13/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
52	11/03/2008	FINISHED INITIAL DATA CAPTURE			
51	11/05/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	11/05/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
49	08/27/2008	PUBS CASE REMAND TO TC			
48	08/27/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

47	08/27/2008	PUBS CASE REMAND TO TC			
46	08/27/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	08/27/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
44	08/27/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
43	08/27/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	08/27/2008	EMAIL NOTIFICATION			
41	08/25/2008	MAIL ACKNOWLEDGEMENT OF PRIORITY PAPERS			
40	08/21/2008	ACKNOWLEDGEMENT OF PRIORITY PAPERS			
39	08/11/2008	EXPORT TO INITIAL DATA CAPTURE			
38	08/11/2008	ELECTRONIC REVIEW			
37	08/11/2008	EMAIL NOTIFICATION			
36	08/11/2008	MAIL NOTICE OF ALLOWANCE			
35	08/05/2008	ISSUE REVISION COMPLETED			
34	08/05/2008	DOCUMENT VERIFICATION			
33	08/04/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
32	08/04/2008	CASE DOCKETED TO EXAMINER IN GAU			
31	08/04/2008	NOTICE OF ALLOWABILITY			
30	06/04/2008	MISCELLANEOUS INCOMING LETTER			
29	06/04/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
28	05/22/2008	DATE FORWARDED TO EXAMINER			
27	04/30/2008	RESPONSE AFTER NON-FINAL ACTION			
26	01/31/2008	ELECTRONIC REVIEW			
25	01/30/2008	EMAIL NOTIFICATION			
24	01/30/2008	MAIL NON-FINAL REJECTION	317		-1
23	01/22/2008	NON-FINAL REJECTION			
22	04/19/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	01/19/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	10/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
15	12/03/2007	CASE DOCKETED TO EXAMINER IN GAU			
14	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS)			

FILED			
11	10/23/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE	
10	10/23/2006	CASE DOCKETED TO EXAMINER IN GAU	
9.7	04/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	
9	04/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	
7	01/19/2006	REFERENCE CAPTURE ON IDS	
6.7	01/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	
6	01/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	
5	01/19/2006	371 COMPLETION DATE	
4	05/22/2006	APPLICATION DISPATCHED FROM OIPE	
3	05/22/2006	NOTICE OF DO/EO ACCEPTANCE MAILED	
2	02/08/2006	CLEARED BY OIPE CSR	
1	01/19/2006	INITIAL EXAM TEAM NN	

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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